

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 61417-7-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
CHASE DAUGHERTY,)	UNPUBLISHED
DOB: 7/25/89,)	
)	FILED: <u>April 26, 2010</u>
Appellant.)	

Cox, J. – Chase Daugherty contends the superior court violated his due process rights in proceeding to adjudicate a minor in possession of liquor charge without observing adequate procedural requirements in determining his competency. We conclude Daugherty waived any procedural deficiencies and affirm.

The State charged Daugherty with three offenses, minor in possession of liquor (MIP), vehicular assault, and possession of stolen property. The facts leading to these charges are not relevant to the appeal. There were several hearings regarding Daugherty's competency. Dr. Leslie Rawlings evaluated Daugherty and found him competent. Defense counsel requested a continuance for an additional evaluation, which the court granted. Dr. Kristina Franey then concluded that Daugherty was not competent. At a hearing in September 2007, the parties agreed that Daugherty was not competent. The court granted a continuance so defense counsel could explore potential options to restore Daugherty's competency that did not require commitment to Western State Hospital. On October 9, 2007, the prosecutor and Daugherty's two

defense counsel jointly recommended that Daugherty be committed to Western State Hospital. The court found Daugherty not competent and committed him for restoration.

Dr. Gregg Gagliardi and Dr. Helmut Steinwender evaluated Daugherty at Western State, and Dr. Gagliardi issued a report concluding that Daugherty was competent. The next hearing was October 30, 2007. The prosecutor argued that Daugherty was now competent. Defense counsel in Daugherty's vehicular assault case expressed concerns about his client's mental health but informed the court that Daugherty had directed him to stipulate to competency. Defense counsel in Daugherty's MIP charge also stipulated to competency. The court did not hear testimony or question Daugherty, but found him competent based on Dr. Gagliardi's evaluation, which the trial court expressly considered, and the parties' stipulation.¹ The court found Daugherty committed the minor in possession offense and sentenced him to one day in custody with credit for one day served. Daugherty appeals.²

Daugherty contends that due process requires that the court conduct an evidentiary hearing whenever there is reason to doubt a defendant's competency. He further argues that defense counsel cannot waive his right to a competency hearing

¹ Dr. Gagliardi's report was not made part of the trial court record. The State has moved for permission under RAP 9.10 to file the report with the trial court and then designate it as part of the record on appeal. We have questions as to why the report, on which the trial court relied, was not included in the trial court record, but that issue is not before us in this appeal. We conclude, however, that if an exhibit is considered but not made part of the record, the issue should first be raised in the superior court. For the purpose of this appeal, we find it unnecessary to consider the content of the report. We therefore deny the motion to supplement without prejudice to renew the motion in the trial court if either side believes that future proceedings may make consideration of the contents of the report necessary.

² Daugherty pled guilty to the vehicular assault charge and the State dismissed the possession of stolen property charge as part of the plea bargain. This appeal is taken only from the MIP adjudication.

after the court finds reason to doubt competency.

This case was stayed pending the supreme court's decision in State v. Heddrick, 166 Wn.2d 898, 215 P.3d 201 (2009), after which both sides submitted supplemental briefing.

Heddrick is factually similar to the present case. In Heddrick, the court held that while incompetency cannot be waived, the procedure used to determine competency may be waived. Heddrick, 166 Wn.2d at 905. While a court has the authority to order and complete competency proceedings on its own, it must do so only when there is reason to doubt a defendant's competency. Heddrick, 166 Wn.2d at 908. Moreover, challenging a competency determination after withdrawing a competency challenge is invited error. Heddrick, 166 Wn.2d at 908.

Daugherty attempts to distinguish Heddrick on the ground that his trial counsel in this case did not formally withdraw the challenge to competency in stipulating to competency. We do not view this as a factual difference sufficient to distinguish Heddrick. Counsel stipulated to competency based on a report finding that Daugherty was competent. The trial court reviewed the report and found Daugherty competent based on the report and the stipulation. In these circumstances, the stipulation to competency based on the report is indistinguishable from withdrawal of a challenge to competency. Because Daugherty waived any right to challenge the trial court's procedure, we affirm.

We affirm the order of disposition.

/s/ Cox, J.

WE CONCUR:

/s/ Lau, J.

/s/ Appelwick, J.